

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY FERONE,

Petitioner,

-against-

UNITED STATES OF AMERICA,

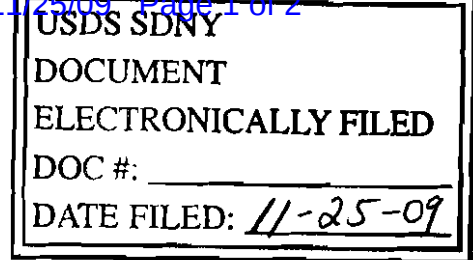
Respondent.
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P. KEVIN CASTEL, District Judge:

Anthony Ferrone seeks to set aside his sentence pursuant to 28 U.S.C. § 2255. He argues that he was denied the effective assistance of counsel at trial and in sentencing. By motion filed November 6, 2009, he has requested appointment of counsel.

Under the authority of 28 U.S.C. § 1915(e)(1), “[t]he court may request an attorney to represent any person unable to afford counsel.” In assessing petitioner’s application, I have first examined the substance and likely merits of the underlying claims as they appear at this early stage of the proceeding. I have also examined, to the extent that the existing record permits me to do so, the petitioner’s “ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the [petitioner’s] ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination.” Hodge v. Police Officers, 802 F.2d 58, 61-62 (2d Cir. 1986).

Here, the claims raised in the petition relate to the advice he received from his lawyer in connection with his decision to proceed to trial rather than enter a plea of guilty and the adequacy of counsel’s consideration of calling certain witnesses. At this stage, it



09 Civ. 8538(PKC)
06 Cr. 216-2

ORDER DENYING
APPOINTMENT
OF COUNSEL

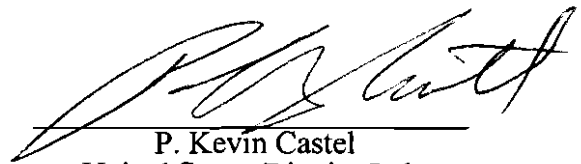
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does not appear the appointment of counsel is necessary to a full exploration of the issues, although I may revisit this issue as the matter proceeds.

Mr. Ferrone is invited to contact the Court's Pro Se Office located in Room 230 of the Moynihan U.S. Courthouse, 500 Pearl Street, New York, NY 10007, 212-805-0175 to inquire about assistance in proceeding without a lawyer.

Petitioner's motion for the appointment of counsel (Docket #3) is denied without prejudice.

SO ORDERED.



P. Kevin Castel
United States District Judge

Dated: New York, New York
November 25, 2009